



January 8, 2002

Ms. Mary E. Reveles
Assistant County Attorney
County of Fort Bend
301 Jackson, Suite 621
Richmond, Texas 77469-3108

OR2002-0135

Dear Ms. Reveles:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 157083.

The Fort Bend County Sheriff's Office (the "sheriff") received a request for information relating to a specified street address and two named individuals. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception protects information that another statute makes confidential. Section 261.201 of the Family Code provides in relevant part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We find that the information submitted as Exhibit E comprises files, reports, records, communications, and working papers used or developed in an investigation made under chapter 261 of the Family Code. You do not inform this office that the sheriff has adopted a rule that governs the release of this type of information. We therefore assume that no such rule exists. Given that assumption, we conclude that Exhibit E is confidential in its entirety under section 261.201 of the Family Code. *See also* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). Accordingly, Exhibit E must be withheld from disclosure under section 552.101 of the Government Code as information made confidential by law.¹ As Exhibit E is confidential in its entirety, the sheriff must not release basic information.²

Next, we address your claim under section 552.108 of the Government Code with respect to Exhibits C and D. Section 552.108 provides in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution; [or]

¹We note that a parent or other legal representative of a victim of alleged child abuse or neglect may be entitled to obtain portions of the requested information from the Texas Department of Protective and Regulatory Services. *See* Fam. Code § 261.201(g).

²As we are able to make this determination with respect to Exhibit E, we need not address your claims of constitutional privacy and the common-law informer's privilege under section 552.101.

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

...

(c) This section does not except [from public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108(a)(1)-(2), (b)(1)-(2), (c). A governmental body that raises section 552.108 must reasonably explain, if the responsive information does not supply an explanation on its face, how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). Section 552.108(a)(1) protects information that is shown to be related to a pending criminal investigation or prosecution. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 216 at 3 (1978). Section 552.108(a)(2) is applicable only to a closed case that did not conclude in a conviction or a deferred adjudication. Section 552.108(b) protects internal records and notations of a law enforcement agency, the disclosure of which would interfere with law enforcement or crime prevention. *See also* Open Records Decision Nos. 628 at 2 (1994) (governmental body must demonstrate that release of information relating to closed case would interfere with law enforcement or crime prevention), 508 at 4 (1988) (governmental body must show how release of information at issue would interfere with law enforcement efforts, unless information does so on its face).

You assert that Exhibits C and D relate to open cases and that the release of these documents would interfere with the investigation and/or prosecution of these cases. We note, however, that Exhibits C and D involve charges of assault and aggravated assault. These offenses allegedly occurred on May 17, 1998. The applicable statute of limitations for both of these offenses is three years.³ More than three years elapsed between May 17, 1998, and the date of your request for this decision. You do not inform this office that any criminal charges were filed within the three-year limitations period. Thus, you have not shown that Exhibits C and D relate to pending cases. Nevertheless, the submitted documents themselves indicate that a grand jury indicted the suspect in Exhibit D on August 31, 1998. These documents also reflect that Exhibits C and D relate to the same incident. Therefore, *provided that the offense described in Exhibit D is still the subject of a pending criminal prosecution*, we find that the release of Exhibits C and D would interfere with the detection, investigation, or prosecution of crime. In that event, Exhibits C and D are excepted from disclosure under

³See Crim. Proc. Code §§ 12.01(6), 12.03(d).

section 552.108(a)(1). *See* Gov't Code § 552.108(a)(1); *Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 372 at 4 (1983) (section 552.108 may be invoked by any proper custodian of information relating to an incident involving allegedly criminal conduct that is under active investigation or prosecution).

We note, however, that section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page offense and arrest information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87. The sheriff must release basic front-page offense and arrest report information, including a detailed description of the alleged offense, whether or not that information is actually located on the front page of the report. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing the types of information deemed public by *Houston Chronicle*).

If a related criminal prosecution is no longer pending, the sheriff may not withhold Exhibits C and D under section 552.108(a)(1). Furthermore, the sheriff may not withhold Exhibits C and D under section 552.108(a)(2), as you have not shown that these documents relate to closed cases that did not result in conviction or deferred adjudication. You also have not demonstrated that the release of Exhibits C and D would interfere with law enforcement or crime prevention, and therefore the sheriff may not withhold these documents under section 552.108(b). Thus, if the offense described in Exhibit D is no longer the subject of a pending prosecution, then the sheriff may not withhold Exhibits C or D under section 552.108.

In that event, the sheriff may be required to withhold social security numbers that appear in Exhibits C and D under section 552.101. A social security number is confidential under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if the social security number was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that the sheriff obtained or maintained the social security numbers in question pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the sheriff to obtain or maintain a social security number. We therefore have no basis for concluding that the social security numbers in question were obtained or are maintained pursuant to such a law and are therefore confidential under section 405(c)(2)(C)(viii)(I) of the federal law. We caution the sheriff, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Therefore, prior to releasing a social security number, the sheriff should ensure that it was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

Exhibits C and D also contain driver's license, license plate, and vehicle identification numbers. Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from [required public disclosure] if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130(a)(1)-(2). Texas driver's license, license plate, and vehicle identification numbers must be withheld from the public in accordance with section 552.130.

We note, however, that the requestor appears to be one of the persons whose social security and driver's license numbers appear in Exhibits C and D. If so, then the requestor has a special right of access to her own social security and driver's license numbers. *See* Gov't Code § 552.023.⁴ This information may not be withheld from the requestor under section 552.101 of the Government Code in conjunction with section 405(c)(2)(C)(viii)(I) of the Social Security Act or under section 552.130.

In summary, Exhibit E is confidential in its entirety under section 261.201 of the Family Code and must be withheld from disclosure under section 552.101 of the Government Code. If the offense described in Exhibit D is still the subject of a criminal prosecution, then the sheriff may withhold Exhibits C and D under section 552.108(a)(1), but must release basic information under section 552.108(c). If not, then Exhibits C and D contain social security numbers that may be confidential under section 552.101 in conjunction with federal law, as well as driver's license, license plate, and vehicle identification numbers that must be withheld under section 552.130. The requestor has a special right of access to her own social security and driver's license numbers, however, under section 552.023.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

⁴Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." *See also* Open Records Decision No. 481 at 4 (1987) (privacy theories are not implicated when an individual asks a governmental body to provide him with information concerning himself).

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

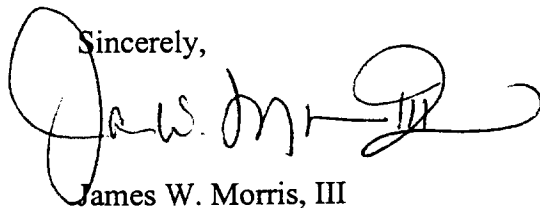
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", with a large, stylized initial "J" and a long, sweeping underline.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 157083

Enc: Submitted documents

c: Ms. Tammy Holmstrom
8255 Sunbury Lane, #1103
Houston, Texas 77095
(w/o enclosures)